IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICEOF MOTION NO. 3918 OF 2005

IN SUIT NO. 1366 OF 1986

SHAIMAK FALI MARSHALL ... PETITIONER/PLAINTIFF.

VS.

M/S.CHEROKEE EQUIPMENT

& ORS. ... RESPONDENTS/DEFENDANTS.

MR. A.N.THAKKAR I/B. THAKKAR & CO. FOR THE PLAINTIFF/PETITIONER.

MR. ADITYA I/B. KHAITAN & JAYKAR FOR THE DEFENDANTS/RESPONDENTS.

MR. G.G.SURVE CLERK OF COURT RECEIVER PRESENT.

Coram : S.K.Shah, J.

Date : January 27, 2006.

P.C.

1. By this notice of motion, the Petitioner/ Plaintiff had pressed for three prayers, namely, b(i), (iv) and (v).

2. The learned Counsel for the Respondents/ Defendants submits that this Court become functious officio, as by Order dated 2.4.2004, passed in Suit, an Arbitrator has been appointed and, therefore, the Plaintiff/ Petitioner can move the Arbitrator for these prayers. He further submits that by virtue of Section

8 & 9 of the Arbitration & Conciliation Act, this Court has no jurisdiction and it became Functious Officio.

3. The leaned Counsel for the Plaintiff/Petitioner submits that although the Arbitrator has been appointed, he has not yet started dealing with the reference of Arbitration. He further submits that this notice of motion is taken out in the Suit which is still pending in this Court. He further submits that the prayers, which he is pressing for, are in respect of submission of books of accounts, bank accounts and disclosure of the present status of the Suit Premises on the basis of the Order passed by this Court while appointing the Court Receiver.

4. It appears that the defendant was appointed agent in respect of the Suit Premises, the Respondent/defendant took the premises but failed to give any accounts to the Court receiver. As a result by order, dated 23rd December, 2005 and 12th July, 2006, the Receiver was directed to take the possession of the premises. Accordingly the Receiver has now taken over the possession of the premises.

5. The Arbitration proceeding has not yet begun and, as submitted by the learned Counsel for the Petitioner/Plaintiff, the books of accounts are not furnished, the arbitration could not be proceeded with.

6. In view of the provisions of Section 9 of the

Arbitration & Conciliation Act, I feel that it is necessary to entertain this notice of motion. The motion can also be entertained although strictly speaking, at the time of appointing the arbitrator, the Suit could be said to have been disposed of. Since the Suit is pending and in which the notice of motion is taken out, and in the motion, the interim reliefs are sought, requires consideration.

7. The learned Counsel for the Defendants /Respondents submits that all the books of accounts and records have been produced before the Receiver. Having relied on this statement, relief claimed in prayer clause (b)(i) is not considered.

8. As regards the reliefs claimed in prayer clause (b)(iv) and b(v) are concerned, the learned Counsel submits that he need to take instructions.

9. The learned Counsel for the Respondents/ Defendants at this stage is given an opportunity to file reply with regard to these three prayers. He however submits that he does not want to file any reply and wants the Court to pass the Order.

10. Under the circumstances the notice of motion is made absolute in terms of prayer clauses (a), (b)(iv), (b)(v) of notice of motion.

11. At this stage, as regards the prayer clause

(b)(i), the learned Counsel for the Respondents/ Defendants states that he is not sure whether all the books of accounts are submitted before the Court Receiver. Therefore, the notice of motion is also made absolute in terms of prayer clause (b)(i), if all the books of accounts are already not furnished before the Court Receiver.

12. The Respondents/ Defendants shall comply with the requirements of prayer clauses (b) (i), (iv) and (v) within four weeks from today.

. The motion is disposed of accordingly.

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[S.K.Shah , J.]